

REMARKS:

Status of the Claims

Claims 1-21 were originally filed. In the September 11, 2008 Amendment, claims 10 and 17 were canceled. Claims 1-9, 11-16, and 18-21 stand rejected in the October 19, 2009 Office Action. In this Amendment, the elements of claim 2 are now incorporated into claim 1, and claims 2, 18, and 21 are further canceled. Accordingly, upon entry of this Amendment, claims 1, 3-9, 11-16, 19, and 20 are pending.

Claim Rejections - 35 U.S.C. § 103

• **O'Connor (US 6,432,891) in view of Triplett *et al.* (US 2003/0199402)**

Claims 1, 11-16, and 18-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Connor in view of Triplett *et al.* Examiner states that the scope of claims 1, 11-16, and 18-21 is not supported by the evidence filed (i.e., the Declaration under 37 CFR 1.131 filed September 11, 2008) (*See*, Office Action, pages 2-3).

To advance the prosecution, Applicants amend claim 1 to specifically recite the monocyclic materials recorded in the Declaration previously filed under 37 CFR 1.131 on September 11, 2008. The Declaration demonstrates that the claimed invention was in possession of the inventors prior to the filing date of Triplett *et al.* Accordingly, with the removal of the Triplett reference, this pending rejection is no longer applicable. Thus, this rejection is believed to be overcome.

- **O'Connor (US 6,432,891) in view of Rohe *et al.* (US 4,968,496)**

Claims 1-9, 11-16, and 19-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Connor in view of Rohe *et al.* Examiner repeats the assertion that the combination of O'Connor and Rohe *et al.* would be obvious to one of ordinary skill in the art (*See*, Office Action, pages 3-4).

Applicants respectfully submit that discovering a novel malodor-counteracting composition is a non-obvious invention. For example, Rohe *et al.* teach the combination of zinc ricinoleate and zinc compounds of polyhydroxylated higher fatty acids, oxamines and resin, which has been widely used as a deodorant for many years (*See*, Rohe *et al.*, col. 4, lines 6-9; col. 1, lines 31-34), yet continuous effort has been made to develop more desirable zinc ricinoleate-containing compositions that are stable and effective (*See*, Rohe *et al.*, col. 2, lines 4-34). After reviewing the Rohe invention and its teaching of prior technology, one skilled in the art would recognize that an improved deodorant composition can not be obtained simply through routine experimentation. Further, given a large number of different malodor counteractants known and available in the art, it requires undue experimentation to develop a specific combination composition that possesses superior effect in deodorization.

The claimed invention is directed to a novel malodor-counteracting composition (i.e., combination of monocyclic materials with zinc ricinoleate) that possesses unexpectedly superior effect compared to similar compositions (i.e., combinations of monocyclic materials with other zinc salts) (*See*, the Declaration, Exhibit A). Further, the level of zinc ricinoleate was optimized so that an effective use is achieved (*See*, the Declaration, Exhibit C).

Although O'Connor and Rohe *et al.* can be said to fairly disclose individual elements of monocyclic materials and zinc ricinoleate, neither of the references suggests combination of these two elements, let alone the recited, specific concentrations. Applicants respectfully submit that the O'Connor and Rohe disclosures can not be said to teach or suggest one skilled in the art to arrive at all of the recited elements in the claimed invention. Applicants further respectfully submit that the present inventors have demonstrated the criticality of the types and concentrations of malodor counteractants in the claimed composition through the incorporation of the Declaration of record filed under 37 CFR 1.131. The claimed combination of monocyclic materials with zinc ricinoleate at the recited levels performed in a surprising and unexpectedly superior way and provided superior effectiveness in deodorization compared to other combinations of ingredients.

For at least these reasons, Applicants respectfully submit that the claimed invention is non-obvious over O'Connor in view of Rohe *et al.* Applicants respectfully request that the 35 U.S.C. § 103 rejection be withdrawn.

- **O'Connor in view of Rohe *et al.*, and further in view of Pavlin *et al.* (US 5,783,657)**

Claims 18 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Connor in view of Rohe *et al.* as applied to claim 1 above, and further in view of Pavlin *et al.* (*See*, Office Action, page 4).

To advance the prosecution, Applicants cancel claims 18 and 21, without prejudice. Accordingly, this rejection is considered to be moot.

CONCLUSION:

In view of the foregoing, Applicants respectfully request reconsideration, withdrawal of rejections, and allowance of all claims is earnestly solicited.

The Commissioner is authorized to charge any required fees, including any extension and/or excess claim fees, any additional fees, or credit any overpayment to the Deposit Account No. 12-1295.

Respectfully submitted,

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